



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

██████████
██████████
██████ MI ██████████

Date Mailed: April 22, 2019
MAHS Docket No.: 19-000891
Agency No.: ██████████
Petitioner: OIG
Respondent: ████████ ████████

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Title 7 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16. After due notice, a telephone hearing was held on April 18, 2019, from Lansing, Michigan. The Department was represented by Craig Baylis, Regulation Agent of the Office of Inspector General (OIG). Respondent, ██████████ did not appear. The hearing was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4).

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
2. Should Respondent be disqualified from the Food Assistance Program (FAP)?
3. Does Respondent owe the Department a debt for the value of FAP benefits trafficked?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On March 22, 2016, an individual with a Facebook profile name of "██████████" made a post that stated, "Anybody got some stamps they trying to sale!?!?"
2. On May 7, 2016, ██████████ ██████████ made a post on Facebook that stated, "Anybody got food stamps they trying to sale? I need them like today!!"

3. On July 17, 2016, [REDACTED] [REDACTED] made a post on Facebook that stated, "Who got some stamps? Y'all ain't gotta comment just hit my inbox!!!"
4. On September 15, 2016, [REDACTED] [REDACTED] made a post on Facebook that stated, "Anybody got some stamps? I just need about 50 to 75!"
5. On October 9, 2016, [REDACTED] [REDACTED] made a post on Facebook that stated, "Who got some stamps? I need them immediately!"
6. On July 13, 2017, [REDACTED] [REDACTED] made a post on Facebook that stated, "I'm irritated asf! Do anybody got some stamps for sale or will have some by the 15th?!"
7. On September 15, 2017, [REDACTED] [REDACTED] made a post on Facebook that stated, "Anybody got food stamps? I have \$50 to \$100 for y'all depending on how many y'all trying to sale!"
8. On October 6, 2017, [REDACTED] [REDACTED] made a post on Facebook that stated, "Food stamps anyone? I got \$50 to \$100 right now! I need candy for my son candy bag."
9. On November 11, 2018, [REDACTED] [REDACTED] made a post on Facebook that stated, "I woke up hungry asf! I feel like making a whole ass meal rite now damn I wish somebody sale me some damn stamps #fml."
10. The Department discovered the Facebook posts made by [REDACTED] [REDACTED] and conducted an investigation. The Department determined that the Facebook profile for [REDACTED] [REDACTED] belonged to Respondent because (a) [REDACTED] [REDACTED] posted a picture of her lease agreement and it showed Respondent's name as the lessee, (b) [REDACTED] [REDACTED] posted a picture of her employee identification and it showed Respondent's name, (c) [REDACTED] [REDACTED] posted the name of her child and it matched the name of Respondent's child on record for Respondent with the Department, and (d) [REDACTED] [REDACTED] profile picture matched Respondent's picture on file with the Secretary of State when compared.
11. The Department attempted to contact Respondent to obtain her explanation for the posts, but the Department was unable to obtain Respondent's explanation.
12. On January 7, 2019, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
13. The OIG requested recoupment of \$100.00 for the value of FAP benefits trafficked, and the OIG requested that Respondent be disqualified from receiving program benefits for 12 months for a first IPV.

14. A notice of hearing was mailed to Respondent at her last known address and it was not returned by the United States Postal Service as undeliverable.

CONCLUSIONS OF LAW

The Supplemental Nutrition Assistance Program (SNAP) is a federal food assistance program designed to promote general welfare and to safeguard well-being by increasing food purchasing power. 7 USC 2011 and 7 CFR 271.1. The Department administers its Food Assistance Program (FAP) pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015. Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Intentional Program Violation

An intentional program violation (IPV) “shall consist of having intentionally: (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards.” 7 CFR 273.16(c).

Trafficking means:

- (1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone;
- (2) The exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for SNAP benefits;
- (3) Purchasing a product with SNAP benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount;
- (4) Purchasing a product with SNAP benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with SNAP benefits in exchange for cash or consideration other than eligible food; or
- (5) Intentionally purchasing products originally purchased with SNAP benefits in exchange for cash or consideration other than eligible food.

(6) Attempting to buy, sell, steal, or otherwise affect an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.

7 CFR 271.2.

An IPV requires that the Department establish by clear and convincing evidence that the client has trafficked FAP benefits. 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence which is so clear, direct, weighty, and convincing that it enables a firm belief as to the truth of the allegations sought to be established. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citing *In re Jobes*, 108 NJ 394 (1987)).

In this case, I find that the Department has met its burden. The Department presented sufficient evidence to establish that Respondent made a post on Facebook in an attempt to purchase FAP benefits for cash. Respondent's posts referred to "stamps" and "food stamps" which are recognized by the Department as lingo commonly used to refer to FAP benefits on Facebook. Respondent did not deny that her posts were referring to FAP benefits or provide any explanation for her actions. Thus, I must find that the evidence establishes that Respondent attempted to purchase FAP benefits on Facebook when she posted that she was looking for "stamps" and "food stamps" for sale. Therefore, I must find that Respondent's conduct meets the definition of trafficking in 7 CFR 271.2(6).

Disqualification

In general, individuals found to have committed an intentional Program violation through an administrative disqualification hearing shall be ineligible to participate in the Program: (i) for a period of 12 months for the first violation, (ii) for a period of 24 months for the second violation, and (iii) permanently for a third violation. 7 CFR 273.16(b). Only the individual who committed the violation shall be disqualified – not the entire household. 7 CFR 273.16(b)(11).

In this case, there is no evidence that Respondent has ever been found to have committed an IPV related to FAP benefits. Thus, this is Respondent's first IPV related to FAP benefits. Therefore, Respondent is subject to a 12-month disqualification.

Overissuance

A recipient claim is an amount owed because of benefits that were overpaid or benefits that were trafficked. 7 CFR 273.18(a)(1). A recipient claim based on trafficking is the value of the trafficked benefits. 7 CFR 273.18(c)(2). In this case, Respondent engaged in trafficking when she attempted to purchase FAP benefits for cash on Facebook. The Department presented sufficient evidence to establish that Respondent attempted to purchase FAP benefits on more than one occasion for \$50 to \$100. The Department requested recoupment of \$100, and the Department presented sufficient evidence to establish that Respondent trafficked FAP benefits valued at \$100 or more. Thus, Respondent owes the Department \$100.00.

DECISION AND ORDER

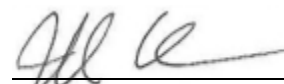
The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department has established, by clear and convincing evidence, that Respondent committed an IPV.
2. Respondent should be disqualified from FAP.
3. Respondent owes the Department \$100.00 for the value of FAP benefits he trafficked.

IT IS ORDERED THAT the Department may initiate recoupment procedures to collect the \$100.00 debt Respondent owes the Department for the benefits he trafficked.

It is FURTHER ORDERED that Respondent shall be disqualified from the FAP program for a period of 12 months.

JK/nr



Jeffrey Kemm
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Genesee Union St. County DHHS- via
electronic mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

DHHS

Tamara Morris
125 E. Union St 7th Floor
Flint, MI
48502

Respondent

[REDACTED]
[REDACTED]
[REDACTED] MI
[REDACTED]